IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 6850 of 1999
For Approval and Signature:
Hon'ble MR.JUSTICE C.K.THAKKAR

1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes. : YES

2. To be referred to the Reporter or not?-No. :

3. Whether Their Lordships wish to see the fair copy of the judgement?-No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No. : NO

5. Whether it is to be circulated to the Civil Judge?-No. :

GUJARAT STEEL AND AGRICO INDUSTRIES
Versus
GUJARAT ELECTRICITY BOARD

Appearance: MR PARESH M DAVE for Petitioners
MR PK PANCHOLI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR
Date of decision: 01/05/2000

ORAL JUDGEMENT

Rule. Mr.P.K.Pancholi appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing.

This petition is filed against the supplementary bill issued by the Gujarat Electricity Board (`Board', for short), respondent No.1 herein and partly aggrieved by the order passed by the Appellate Committee of the Board.

The case of the petitioner was that against issuance of supplementary bill, he had approached this Court, but in view of the directions issued by this Court, he has approached the Appellate Committee constituted by the Board. Before the Appellate Committee, three grievances were made by the petitioner.

Firstly, the factory did not run round the clock, but only for one shift of eight hours, and supplementary

bill issued on the basis of consumption of electricity for 24 hours was illegal.

Secondly, the factory remained closed for a period between July 9, 1993 and September 10, 1993 and though the authority was informed about it, there was demand even for that period.

Thirdly, there was no tampering with electric meter by the petitioner.

The Appellate committee considered the submissions on behalf of the petitioner-appellant and partly allowed the appeal, holding that the first submission of the petitioner-appellant was well-founded. Accordingly, the amount was reduced from 24 hours to eight hours. Obviously, the petitioner h....

against it.

So far as the third contention regarding tampering of meter was concerned, in the light of the facts and circumstances and material on record, the Appellate Committee held that there was tampering of meter by the petitioner-appellant. Such a finding is a finding of fact and it cannot be set aside or disturbed in exercise of power under Article 226 / 227 of the Constitution. Hence, it is rejected.

Regarding the closure of Unit, in the order passed by the Appellate Committee, in paragraph 5, it was stated :-

> "... From the copy of the muster, it is not establish(ed) that factory was closed from 9-7-93 to 10-9-93. Party had not informed to Board being HT consumer .... "

My attention was invited by the learned counsel for the petitioner to a communication dated 21st of February, 1995, Annexure `D' to the petition, along with communications to Executive Engineer, Gujarat Electricity Board, Division I, Kalol on 16th of July, 1993, 5th of October, 1993 and 10th of September, 1993 (pages 57, 58 and 59 respectively). The counsel also submitted that all the three communications were sent to the Executive Engineer and in token of receipt of those communications, they were countersigned by the Deputy Superintendent (Admn. - Est.). He, therefore, submitted that there is an error apparent on the face of the record, which requires to be corrected by directing the Appellate

Committee to decide the question in accordance with law afresh. It was stated that the muster roll was also before the Appellate Committee, from which it could be established that there were only few workers during the period between July 9, 1993 and September 10, 1993, which would go to show that the factory was not working during that period.

In the facts and circumstances, in my opinion, the petition deserves to be allowed partly, by directing the Appellate Committee to decide the matter afresh in the light of the evidence adduced before it and to come to its own conclusion. I may state that I am not expressing any opinion one way or the other and it is for the Appellate Committee to decide without being inhibited by any observations made by me hereinabove.

In the result, the petition is partly allowed. The order passed by the Appellate Committee so far as it relates to closure of the Unit between July 9, 1993 and September 10, 1993 is hereby quashed and set aside and the Appellate Committee is directed to reconsider the said question and to come to its own conclusion on the basis of the material placed before it. So far as the remaining part of the order is concerned, it is confirmed.

The petition is allowed accordingly. Rule is made absolute. No order as to costs.

Since the matter is old and the period of closure relates to 1993, the Appellate Committee is directed to decide the question as expeditiously as possible, preferably within two months from the receipt of the writ.

1st May, 2000. (C.K. Thakkar, J.)

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(apj)